

FILE COPY

REGD. - Supreme Court U. S.

ST. LOUIS

FEB 23 1943

CHARLES E. BROWN, CLERK

CLERK'S OFFICE

No. 629

In the Supreme Court of the United States

October Term, 1942

THE UNITED STATES OF AMERICA, APPELLANT

v.

PHILIP LIPOWITCH AND MARVIN SPECTOR, APPELLEES

**BY APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT OF MISSOURI,
EASTERN DIVISION**

AMERICAN BUREAU OF THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Specification of errors to be urged	5
Summary of argument	6
Argument:	
The allegations in the indictment that defendants with intent to defraud pretended to be Federal Bureau of Investigation agents and in that capacity requested information as to the whereabouts of a third person fully satisfy the requirements of the statutory offense that defendants shall with intent to defraud take upon themselves to act as officers of the United States	7
I. The demand of defendants in their pretended capacity as Federal Bureau of Investigation agents for information as to the whereabouts of a third person cannot be said, as a matter of law, not to constitute a taking upon themselves to act as Federal Bureau of Investigation agents	9
II. The demand of defendants in their pretended capacity as Federal Bureau of Investigation agents for information as to the whereabouts of a third person cannot be said, as a matter of law, to have been made without the intent to defraud which is required by the statute and alleged in the indictment	13
Conclusion	23

CITATIONS

Cases:	
<i>Elliott v. Hudspeth</i> , 110 F. (2d) 389	15
<i>Lamar v. United States</i> , 241 U. S. 103	6, 9, 10, 12, 13, 21
<i>Pierce v. United States</i> , 86 F. (2d) 949, 314 U. S. 306	6, 9, 11, 12, 13
<i>Reed v. United States</i> , 252 Fed. 21	14, 21
<i>United States v. Barnow</i> , 239 U. S. 74	6, 12, 17, 20, 21, 22
<i>Warner v. Goltra</i> , 293 U. S. 155	20
Statutes:	
Act of June 6, 1934, c. 408, 48 Stat. 910 (18 U. S. C. 575)	14
Criminal Code, 35 Stat. 1088, as amended (18 U. S. C. Secs. 71-150)	20
Sec. 32 (18 U. S. C. Sec. 76)	2, 5, 8, 15, 17, 23

Miscellaneous:

<i>Annual Report of Attorney General of the United States:</i>	<i>Page</i>
1939, p. 160	11
1940, p. 177	11
1941, p. 180	21
1941, p. 199	11
1942, p. 242-243	21
1942, p. 244, 260-A	11
14 Cong. Rec. 3238	17, 18
14 Cong. Rec. 3263	17, 20
14 Cong. Rec. 3264	20
15 Cong. Rec. 1144, 1156, 1177, 1285, 2256, 2318, 2627, 2676, 2729, 2827, 3368	19, 20
H. R. 4903	19
S. 1563	19

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 629

THE UNITED STATES OF AMERICA, APPELLANT

v.

PHILIP LEPOWITCH AND MARVIN SPECTOR, APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT OF MISSOURI,
EASTERN DIVISION

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the district court (R. 4-6), sustaining demurrers to the indictment, is not reported.

JURISDICTION

The jurisdiction of this Court on direct appeal is invoked under the Act of March 2, 1907, c. 2564, 34 Stat. 1246, as amended by the Act of May 9, 1942, Pub. No. 543, 77th Cong., 2d sess., c. 295 (18 U. S. C. 682), commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code, as amended by the Act of February 13, 1925,

c. 229, 43 Stat. 936 (28 U. S. C. 345). The order of the district court sustaining demurrers to the indictment was entered on October 26, 1942 (R. 6). The order allowing the appeal was entered on November 25, 1942 (R. 8).

QUESTION PRESENTED

Whether count one of the indictment charges activities which constitute an offense under Section 32 of the Criminal Code (18 U. S. C. 76).

STATUTE INVOLVED

The statute involved is the Act of April 18, 1884, c. 26, 23 Stat. 11, as amended by the Act of March 4, 1909, c. 321, § 32, 35 Stat. 1095, and the Act of February 28, 1938, c. 37, 52 Stat. 83 (18 U. S. C. 76). This statute provides as follows:

Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, or under the authority of any corporation owned or controlled by the United States, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department, or any officer of the Government thereof, or any corporation owned or controlled by the United States,

any money, paper, document, or other valuable thing, shall be fined not more than \$1,000 or imprisoned not more than three years, or both.

STATEMENT

This is a direct appeal from the judgment of the District Court for the Eastern District of Missouri, Eastern Division, sustaining joint demurrers of the defendants to both counts of a two-count indictment charging a violation of Section 32 of the Criminal Code, as amended (18 U. S. C. 76).

Count one of the indictment alleged that the defendants

with intent to defraud Mrs. Adele Silk, did then and there unlawfully, knowingly, falsely and feloniously assume and pretend to be officers and employees acting under the authority of the United States, to wit, agents of the Federal Bureau of Investigation, and did then and there falsely take upon themselves to act as such by then and there in said pretended capacity, demanding of and from the said Mrs. Adele Silk that she give the defendants information of and concerning the whereabouts of one Abe Zaidman; they, the said defendants not being then and there officers or employees acting under the authority of the United States, or of any department thereof, as they, the said defendants, then and there well knew; * * * * (R. 1-2.)

The second count of the indictment alleged that the defendants—

did then and there unlawfully, knowingly, falsely, and feloniously assume and pretend to be officers and employees acting under the authority of the United States, to wit, agents of the Federal Bureau of Investigation, and in such pretended character did demand from the said Mrs. Adele Silk a valuable thing, to wit, demand that she, the said Mrs. Adele Silk, then and there give to them, the said defendants, valuable information of and concerning the whereabouts of one Abe Zaidman; they, the said defendants, not being then and there officers or employees acting under the authority of the United States, or any department thereof, as they, the said defendants, then and there well knew; * * *. (R. 2-3.)

The joint demurrer of the defendants is based solely upon the ground that the indictment fails to state facts sufficient to charge the defendants with the commission of a criminal offense against the United States of America (R. 4).

In sustaining the joint demurrer the court stated (R. 6):

It is my view that the action of these defendants, while highly reprehensible, does not come within the terms of the statute. The action of the defendants, in their false and pretended character of Federal Bureau of Investigation agents, in demanding that

Mrs. Silk inform the defendants as to where Abe Zaidman was located or could be found, is not in my opinion taking upon themselves to act as Federal Bureau of Investigation agents, nor was the information demanded by them "a valuable thing" within the meaning of the statute. It follows that the demurrer to the indictment should be sustained.

SPECIFICATION OF ERRORS TO BE URGED

1. That the district court erred in sustaining, as to count one, the demurrer to the indictment.
2. That the district court erred in holding that "the action of the defendants, in their false and pretended character of Federal Bureau of Investigation agents, in demanding that Mrs. Silk inform the defendants as to where Abe Zaidman was located or could be found, is not * * * taking upon themselves to act as Federal Bureau of Investigation agents," within the meaning of Section 32 of the Criminal Code (18 U. S. C. 76), upon which count one of the indictment was predicated.¹

¹ In the assignment of errors which we submitted to the district court (R. 7) and in the statements of jurisdiction and points to be relied upon on appeal (R. 10, 7) which we submitted to this Court, we asserted that we believed that the district court erred in sustaining the demurrer to the second count of the indictment and in holding as a matter of law that "the information demanded by" the defendants was not "a valuable 'thing' within the meaning" of Section 32 of the Criminal Code; we indicated further that we would seek

6

SUMMARY OF ARGUMENT

In the absence of the phrase, by "demanding * * * information * * * concerning the whereabouts of one Abe Zaidman," in the allegation that defendants acted in their assumed capacity, the first count of the indictment would charge the commission of an offense under the statute. *Lamar v. United States*, 241 U. S. 193; *Pierce v. United States*, 314 U. S. 306, 307. That phrase does not vitiate the otherwise valid indictment.

I. To constitute the offense defined in the first portion of the statute the offender, in addition to the fraudulent intent and false impersonation, must "take upon himself to act as" the officer or employee of the United States whom he has impersonated. Since the official character impersonated may be wholly fictitious, the defendants need not have acted precisely as Federal Bureau of Investigation agents would have acted, nor even as such agents are legally authorized to act, provided the act was done with fraudulent intent. *Lamar v. United States*, 241 U. S. 103. All that is necessary is that the pretender do "some act in keeping with the pretense." *United States v. Barnow*, 239 U. S. 74, 77. Further, inasmuch as

reversal of this error on the present appeal. Although we do not concede that the district court did not err in its decision with respect to the second count we do not now rely on any error therein. For purposes of this case we acquiesce in the decision of the district court insofar as it results in a dismissal of the second count of the indictment:

locating the whereabouts of suspected criminals, witnesses, and other persons is one of the commonly understood routine activities of the Federal Bureau of Investigation, the court below erred in holding as a matter of law that defendants' request could not constitute taking upon themselves to act as Federal Bureau of Investigation agents.

II. Nor can it be said as a matter of law that defendants in pretending to be Federal Bureau of Investigation agents, and in that guise requesting information as to the whereabouts of a third person, could not have had the fraudulent intent alleged in the indictment and required by the statute. The portion of the statute which is alleged to be violated in count one of the indictment requires, as its legislative history and the opinions of this Court indicate, only that the defendant do some act in keeping with the falsely assumed authority in order to deceive some person for the purpose of satisfying an ulterior end which he has in mind.

ARGUMENT

THE ALLEGATIONS IN THE INDICTMENT THAT DEFENDANTS WITH INTENT TO DEFRAUD PRETENDED TO BE FEDERAL BUREAU OF INVESTIGATION AGENTS AND IN THAT CAPACITY REQUESTED INFORMATION AS TO THE WHEREABOUTS OF A THIRD PERSON FULLY SATISFY THE REQUIREMENTS OF THE STATUTORY OFFENSE THAT DEFENDANTS SHALL WITH INTENT TO DEFRAUD TAKE UPON THEMSELVES TO ACT AS OFFICERS OF THE UNITED STATES

The first count of the indictment, after alleging the date and place of commission of the

offense and the requisite intent to defraud, charges that the defendants pretended to be officers of the United States, "to wit, agents of the Federal Bureau of Investigation, and did then and there falsely take upon themselves to act as such by then and there in said pretended capacity, demanding of * * * Mrs. Adele Silk that she give the defendants information of and concerning the whereabouts of one Abe Zaidman." The district judge dismissed this count of the indictment in a memorandum opinion in which, on this point, he said solely that "The action of the defendants, in their false and pretended character of Federal Bureau of Investigation agents, in demanding that Mrs. Silk inform the defendants as to where Abe Zaidman was located or could be found, is not in my opinion taking upon themselves to act as Federal Bureau of Investigation agents * * *." We submit that the court erred in this conclusion and that the indictment properly states a crime under Section 32 of the Criminal Code (18 U. S. C., Section 76).

Although no reasons were given for the conclusion thus stated, and the language of the memorandum opinion is somewhat obscure, the case apparently turned for the district judge on

* This count of the indictment was intended to charge a crime under the first portion of the statute which makes it an offense for any person, "with intent to defraud either the United States or any person" falsely to pretend to be an officer of the United States and to "take upon himself to act as such." [Italics supplied.]

the meaning to be given to the words "take upon himself to act as such" in the statute. It is clear that if instead of the allegation as to the manner in which defendants acted to carry out their pretense, the indictment alleged simply that the defendants falsely pretended to act as agents of the Federal Bureau of Investigation and "did then and there take upon themselves to act as such officers," without describing further the acts which they performed in their pretended capacity, it would have stated a crime under the statute. *Lamar v. United States*, 241 U. S. 103, 116; *Pierce v. United States*, 314 U. S. 306, 307.* Accordingly, unless the additional allegation that defendants acted in their pretended capacity by demanding information as to the whereabouts of a third person vitiates this count, it is adequate and should be upheld.

I. THE DEMAND OF DEFENDANTS IN THEIR PRETENDED CAPACITY AS FEDERAL BUREAU OF INVESTIGATION AGENTS FOR INFORMATION AS TO THE WHEREABOUTS OF A THIRD PERSON CANNOT BE SAID, AS A MATTER OF LAW, NOT TO CONSTITUTE A TAKING UPON THEMSELVES TO ACT AS FEDERAL BUREAU OF INVESTIGATION AGENTS

The district judge apparently thought that the act of requesting information as to the where-

* *I. e.*, count 1 of the indictment "charges the illegal acts complained of and the requisite fraudulent intent, states the date and place of the commission of the acts charged and gives the * * * official character of the officer whom the accused * * * [were] * * * charged with having falsely personated." *Lamar v. United States*, 241 U. S. 103, 116.

abouts of a third person was so unrelated to the activities which are normally understood to be among the duties of Federal Bureau of Investigation agents that defendants could not reasonably be thought by Mrs. Silk to have been Federal Bureau of Investigation agents when, posing as such, they interrogated her.⁴ However, it is common knowledge that Federal Bureau of Investigation agents in the normal course of their duties constantly request information as to the whereabouts of divers third persons, either to apprehend fugitives from justice⁵ or to obtain witnesses, or to interrogate persons who might possess

⁴ The language of the memorandum opinion suggests that the defect in this count was in that portion of the indictment which we have quoted at the beginning of our argument (*supra*, p. 8). In view of *Lamar v. United States*, 241 U. S. 103, 116, it is clear that the request for information made by defendants was not *in fact* required to be of the sort which the Federal Bureau of Investigation would authorize its agents to make. And *a fortiori* the indictment was not required to state formally that a Federal Bureau of Investigation agent is authorized in the course of his duties to make inquiries of this sort. Since the count specifies that defendants pretended to be agents of the Federal Bureau of Investigation and took upon themselves to act as such by demanding "in said pretended capacity" the information concerning the whereabouts of Zaidman, it cannot be said that the indictment was defective in specifying the capacity in which defendants acted. The judge's objection, therefore, must have gone to some other apparent defect in this part of the count. The asserted defect to which we advert in the text is the only possible inadequacy which we can perceive in this portion of the count.

⁵ *E. g.*, during the fiscal year 1942, 3,827 fugitives from justice were apprehended by the Federal Bureau of Investi-

information with respect to offenses committed against the United States. Indeed, a request for information of the sort here involved conforms to, rather than departs from, the common understanding of the character in which defendants pretended to act. At worst, therefore, even if it is conceded that a conviction under this count of the indictment depends upon whether only the very incredulous would be deceived by defendants' conduct (but cf. *Pierce v. United States*, 86 F. (2d) 949 (C. C. A. 6), reversed on other grounds, 314 U. S. 306), the question should have been left to the jury. Certainly acts of the sort here charged cannot, as a matter of law, be said to be at such variance with the guise assumed by defendants that by their conduct they could not have taken upon themselves to act as Federal Bureau of Investigation agents. In view

gation (*Annual Report of the Attorney General of the United States* for the fiscal year ended June 30, 1942 (unpublished), p. 260-A). In the same year 37,486 delinquent registrants under the Selective Service Act were located and complied with the provisions of the Selective Service Act; thus becoming available for service in the armed forces. (Ibid., p. 244.)

The *Annual Report of the Attorney General of the United States* for the fiscal year 1941 shows that during that year 2,633 fugitives were apprehended by the Federal Bureau of Investigation (p. 199).

During the fiscal year 1940, 2,389 fugitives were apprehended by the same Bureau (*Annual Report of the Attorney General of the United States*, 1940, p. 177).

During the fiscal year 1939, 1,890 fugitives were apprehended (*Annual Report of the Attorney General of the United States*, 1939, p. 160).

of the otherwise sufficient content of this count of the indictment (cf. *Pierce v. United States*, 314 U. S. 306, 307; *Lamar v. United States*, 241 U. S. 103, 116) it was clearly erroneous to hold that the request for information which defendants are charged with having made renders the count defective.

Moreover, it is obvious that the criminal character of the behavior under this section of the statute does not depend upon the defendants' ability to convince the most skeptical. *Pierce v. United States*, 86 F. (2d) 949, 952 (C. C. A. 6), reversed on other grounds, 314 U. S. 306, 307. The statute, as we point out below (see *infra*, pp. 15-20), was not designed merely to protect the individual citizen from being imposed upon to his disadvantage. It was also intended to preserve the good repute and dignity of federal authority from the eroding effects of frequent spurious assertion. Accordingly, the requirement that a defendant "take upon himself to act as" an officer of the United States is met when the defendant does "some act in keeping with the pretense" (*United States v. Barnow*, 239 U. S. 74, 77).

We submit that requesting information as to the whereabouts of a third person was unmistakably an act "in keeping with the pretense" that the defendants were Federal Bureau of Investigation agents, and that the allegations of Count 1 of the

indictment satisfy the requirements of the statute that the defendant "take upon himself to act" as a federal officer.

II. THE DEMAND OF DEFENDANTS IN THEIR PRETENDED CAPACITY AS FEDERAL BUREAU OF INVESTIGATION AGENTS FOR INFORMATION AS TO THE WHEREABOUTS OF A THIRD PERSON CANNOT BE SAID, AS A MATTER OF LAW, TO HAVE BEEN MADE WITHOUT THE INTENT TO DEFRAUD WHICH IS REQUIRED BY THE STATUTE AND ALLEGED IN THE INDICTMENT

Although the District Court's opinion does not point to this question, the argument may be made that the demurrer to the first count should have been sustained because the statutory requirement of an "intent to defraud" could not exist where the only act done in the assumed character is requesting information as to the whereabouts of a third person. We submit that this argument cannot be sustained.

The indictment charges defendants specifically with "intent to defraud one Mrs. Adele Silk". Even if the narrowest possible construction were given to the statute, it cannot be said as a matter of law that the required and alleged "intent to defraud" cannot be embodied in a request for information as to the whereabouts of a third person. For example, knowledge of the whereabouts of a fugitive from justice may have a value to the person possessing it, and it may be to his advantage to keep that knowledge from all but the appropriate authorities—as where there is a reward offered.

for such information.* Compare *Reed v. United States*, 252 Fed. 21 (C. C. A. 2). Clearly, it is possible for a person making inquiries as to the whereabouts of the fugitive under those circumstances to be making them with an intent to defraud the innocent person (to whom the inquiries are addressed) of his reward. At most, therefore, whether or not the intention to defraud accompanies a request of the sort here involved is a question which should be submitted to the jury. Certainly it cannot be decided on the pleadings where, as here, they are otherwise sufficiently specific and detailed to charge the offense. *Lamar v. United States*, 241 U. S. 103, 116; *Pierce v. United States*, 314 U. S. 306, 307.

Moreover, we submit that the requirement of an "intent to defraud" in this portion of the statute is met when the defendant seeks to deceive a third person by pretending to be a federal officer (and acts as such) for the purpose of satisfying some ulterior ends of his own. Under that construction, the conduct here charged obviously satisfies the statutory definition of the offense. If we are correct in that construction, the failure of

*E. g., The Act of June 6, 1934, c. 408, 48 Stat. 910 (18 U. S. C. 575), authorized the appropriation of \$25,000.00 to be apportioned and expended in the discretion of, and upon such conditions as may be imposed by the Attorney General of the United States as a reward or rewards for the information leading to the arrest of anyone who is charged with a violation of the laws of the United States, or any state, or of the District of Columbia.

the court below to permit the case to go to trial was clearly error. Accordingly, it is appropriate to urge the propriety of our position with respect to the construction of the statute here.

Examination of the structure of the section discloses that two offenses are contained therein—"one, the assuming and pretending to be an officer or employee acting under the authority of the United States and taking it upon himself to act as such, the other, in such pretended character demanding or obtaining any money, paper, document, or other valuable thing." *Elliott v. Huds-peth*, 110 F. (2d) 389, 390 (C. C. A. 10).¹ It is apparent that in the first portion of the section Congress purported to reach conduct which did not necessarily entail fraudulently extracting or attempting to extract things of value from innocent third persons. Indeed, unless the stricture of the first portion reached behavior which was not covered by the second, the former would be superfluous. And the behavior which Congress sought to proscribe by the first portion, as well as the broad sweep of the proscription which it thus enacted, becomes apparent on examining the differences between the first and second portions of the statute. To commit an offense under the former the

¹ The second portion of the section makes it a separate offense for a person "with intent to defraud either the United States or any person" to pretend to be a federal officer, and "in such pretended character . . . or obtain from any person or from the United States . . . any money, paper, document, or other valuable thing"

impersonator need only "take upon himself to act as" a federal officer. Under the latter he must in his pretended capacity "demand * * * [some] * * * money, paper, document, or other valuable thing". The meaning of each portion of the section, and of the requisite "intent to defraud" under each, must be appraised in the light of that contrast. Viewed in that light the language of the first portion permits little doubt that by it Congress prohibited all attempts to deceive third persons for some ulterior purpose by impersonating federal officers, and not merely attempts to defraud third persons by such pretenses.*

The validity of this conclusion as to the scope of the first portion of the statute is more fully demonstrated by an examination of the objectives which Congress sought to achieve in enacting Sec-

* This conclusion does not, of course, render the second portion of the statute superfluous. In the first place, an aggravated offense is committed when the attempt is not merely to deceive, but to deprive a third person of a thing of value. Hence, a more severe punishment is provided where the object of the impersonation is not merely to deceive by falsely assuming federal authority (thus violating the first portion of the statute) but also to deprive a person of a thing of value by the same pretense (thus violating the second portion of the statute). In the second place, there may be offenses under the second portion of the statute which are not violations of the first portion, *e. g.*, where an offender pretends to be a pension claims investigator but demands only lodging or board from a third person. It is questionable whether such a demand would constitute a taking "upon himself to act as" a pension claims investigator.

tion 32 of the Criminal Code. As this Court has recognized, "It is the aim of the section not merely to protect innocent persons from actual loss through reliance upon false assumptions of Federal authority but to maintain the general good repute and dignity of the service itself." *United States v. Barnow*, 239 U. S. 74, 80. The legislative history of the section permits no dispute as to the intention of Congress to protect innocent persons from loss through reliance upon false assumption of federal authority." And equally little doubt is left by the legislative history as to the intention to protect "the general good repute and dignity of the service itself."

The first Congressional attempt to deal with the problem of false impersonation of federal officers took the form of a Senate amendment to the legislative appropriation bill of 1883. The origins and objectives of the amendment were reported by its sponsor, Senator Allison, who said that the provision had been suggested by the Commissioner of Pensions, and that the latter

* * * states to the committee that a great many persons are representing themselves as the agents and employés of the Pension Office who are not such agents or employés, thus imposing on a great many innocent people. *It is important to the protection of the proper employés of the office that this provision should become a law.* * * *

[Italics added.] (14 Cong. Rec. 3238).

* See e. g. 14 Cong. Rec. 3238, 3263.

The terms of the proposed amendment¹⁰ disclose that it was designed to do more than prevent pecuniary losses to pension claimants or to the United States. The legislation was, as its text shows, and its sponsor said, important for "the protection of the proper employés of the office". That it would also reach attempts at fraudulent acquisition by persons pretending to be pension officers is, for present purposes beside the point. The significant fact is that the proposal was intended to, and would, punish false impersonation of federal officers, regardless of the purpose of the impersonation, because such impersonation was regarded as damaging to the efficient operation of government.

Although senatorial approval of the substance of the amendment was voiced, its inclusion in an appropriation bill was objected to, and it was therefore withdrawn to await introduction as a separate bill.¹¹

On the Monday following the withdrawal of the amendment, the Senate Judiciary Committee

¹⁰ It provided: "Any person who falsely represents himself to be an officer, agent, or employé of the Pension Bureau of the Interior Department, or in such assumed character pretends or assumes to act and perform or does perform in such assumed character any duty or act belonging to such officer, agent, or employé so falsely personated, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding \$1,000, or be imprisoned for a period not more than two years, or both, in the discretion of the court" (14 Cong. Rec. 3238).

¹¹ 14 Cong. Rec. 3238.

reported a bill to punish the false impersonation of officers and employees of the United States. That this bill, which was almost identical with, and ultimately became, the present Section 32 of the Criminal Code,¹² was understood to embody the broad principle contained in the initial proposal is suggested by the remarks of its sponsor¹³ and of Senator Blair. The latter said of the bill:

This covers a very important and grievous abuse in the administration of the pension law. On the objection being made to the necessary legislation being attached to the appropriation bill last Saturday I introduced a bill, which was referred to the Committee on Pensions, covering simply the difficulty so far as the administration of

¹² Although the bill was passed by the Senate, it was not considered in the House in that Congress. However, the same bill was introduced in the Forty-eighth Congress (S. 1568; H. R. 4993) and with minor amendments was passed by both houses, later becoming Section 32 of the Criminal Code (15 Cong. Rec. 1144, 1156, 1177, 1285, 2256, 2318, 2627, 2676, 2729, 2827, 3368).

¹³ In introducing the bill, Senator Garland indicated that it originated with the earlier abortive amendment to the legislation bill. Concerning his proposal he said: "Mr. President, section 5435 of the Revised Statutes makes provision against persons falsely representing themselves to be entitled to certain annuities, dividends, pensions, * * * etc. from the Government, and section 5448 makes provision for punishing persons who falsely represent themselves as revenue officers. There the statutes stop. *This bill provides for, punishing persons who represent themselves as officers or employees or agents of the United States in any respect whatever.*" [Italics supplied.] (14 Cong. Rec. 3263.)

the pension law is concerned. The Committee on the Judiciary has very properly taken jurisdiction of the subject in its wider sense and reported this bill, which will cover all cases of like abuse. * * *

(14 Cong. Rec. 3263-3264.)

It is apparent from the foregoing remarks that in thus providing in Section 32 of the Criminal Code for the punishment of persons who pretend to be federal officers and undertake to act as such, Congress understood that the legislation was "important to the protection of the proper employés" of the Government, and sought in part to protect the good repute of Government officers and thereby the proper functioning of the Government machinery." And this intention has long been given effect by this Court. *United States v.*

¹⁴ Consistent with the Congressional view of the scope of the statute disclosed by the legislative history are two items of evidence which of themselves are not of major significance but which in the context of the legislative history have some relevance. The bill which became Section 32 of the Criminal Code was entitled "A bill making it a felony for a person to falsely and fraudulently assume or pretend to be an officer or employé acting under authority of the United States, or any Department or any officer thereof, and prescribing a penalty therefor" (15 Cong. Rec. 2627). Moreover, the provisions contained in this section are classified by Congress in the Criminal Code (35 Stat. 1088, 1093-1104) and appear in the United States Code (18 U. S. C. Sections 71-170), along with a variety of other offenses addressed to abuses of the authority of the United States, under the general heading "Offenses against operations of Government." While neither of these facts can, of course, change or add to the meaning of the section (cf. *Warner v. Goltra*, 293 U. S. 155,

Barnow, 239 U. S. 74; *Lamar v. United States*, 241 U. S. 103; cf. *Reed v. United States*, 252 Fed. 21 (C. C. A. 2).

In a real sense impersonations of federal officers, when coupled with inquiries of the sort here made, have the effect of "impairing, obstructing, or defeating the lawful function of * * * [a] * * * Department of the Government." *United States v. Barnow*, 239 U. S. 74, 79. In a large measure the Government depends upon the cooperation of its citizens for the effective enforcement of its laws.¹⁵ The confidence and support of citizens which is thus necessary to the successful functioning of nearly every governmental department might easily be dissipated if

160-162), they support the conclusion indicated by the language and history of the section that the protection of the good repute and authority of federal officers, and thereby the operations of the federal government, was one of the objectives of its enactment.

¹⁵ "Private citizens individually and through patriotic organizations such as civic clubs, American veterans' organizations, and fraternal organizations have been most cooperative during the year by reporting national security matters to the FBI. * * * The successful operation of the FBI during the past year is a tribute to the confidence and support of loyal Americans in every part of the nation." (*Annual Report of the Attorney General of the United States, Fiscal Year Ended June 30, 1942* (unpublished), p. 242-243).

"The confidence and support of citizens in every section of the country have contributed materially to the successful operations of the FBI during the year." (*Annual Report of the Attorney General of the United States, Fiscal Year Ended June 30, 1941*, p. 180).

frauds such as the one under consideration are permitted to go unpunished. That Congress was conscious of this evil and sought to curb it by the present statute the Congressional debates suggest. That it accomplished its purpose in Section 32 of the Criminal Code this Court has held. As it said in *United States v. Barnow*, 239 U. S. 74, 78, 80:

In order that the vast and complicated operations of the Government of the United States shall be carried on successfully and with a minimum of friction and obstruction, it is important—or, at least, Congress reasonably might so consider it—not only that the authority of the governmental officers and employés be respected in particular cases, but that a spirit of respect and good-will for the Government and its officers shall generally prevail * * *

It is the aim of the section not merely to protect innocent persons from actual loss through reliance upon false assumptions of Federal authority, but to maintain the general good repute and dignity of the service itself. * * *

Viewing the section as a whole, and taking into consideration the acknowledged objectives of Congress in enacting it, it cannot be doubted, therefore, that the first portion of Section 32 of the Criminal Code prohibits any impersonation of a federal officer by which the impersonator seeks to deceive a third person in order to satisfy some

ulterior purpose of his own. We submit that count one of the indictment charges a crime under the statute as so construed.

CONCLUSION

For the reasons stated above, we respectfully submit that the district court's construction of Section 32 of the Criminal Code, as amended, was erroneous; that the first count of the indictment alleges a violation of the statute; and that the judgment sustaining the demurrer to that count should be reversed and the cause remanded for further proceedings.

CHARLES FAHY,
Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

GEORGE F. KNEIP,

JAMES W. KNAPP,

Attorneys.

FEBRUARY, 1943.